IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.324 OF 2004

Satyappa Gulappa Melakari ...Petitioner

Versus

State of Maharashtra & Anr. ...Respondents

Shri Uday Warunjikar for the Petitioner.
Shri S.K.Chinchilikar, A.G.P for the Respondent No.1.
Shri N.V.Walawalkar, Sr Counsel for the Respondent No.2.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 09, 2007.

P.C.:

1. The submissions of the learned counsel appearing for the parties were heard on the last date. The Petitioner has alleged that the second Respondent has committed breach of direction contained in the judgment and order dated 19th March, 2004 passed by this Court in Writ Petition No.3799 of 2004 and other connected Petitions. The relevant direction of which breach has been allegedly committed is in clause (v) of the operative part of the aforesaid order. The said clause (v) reads thus:

> "(v) It is directed that the petitioners and respondent No.7 will not appoint any peons in the Corporation or in the Municipal Schools without first giving an opportunity to the 44

peons who are respondents in these writ petitions and their cases will be considered by giving them relaxation of age".

2. The allegation made in the Contempt Petition is that without giving an opportunity to 44 persons who were Respondents in the Writ Petitions referred to above, the second Respondent who is the Commissioner of Sangli Miraj and Kupwad City Municipal Corporation has filled up posts of peons by making appointments. It is alleged that the appointments have been made on 23rd May, 2004 and 27th May, 2004.

3. I have heard detailed submissions made by the learned counsel appearing for the parties. I have also perused the affidavits which are placed on record.

4. In the affidavit in reply filed by the second Respondent-contemnor, he has stated that on 01st August, 2003 the State Government issued a circular directing the second Respondent to fill up the backlog before 31st December, 2003. In view of the said direction issued by the Government, the Municipal Corporation started process for filling up the relevant posts. Interviews were held during the period from 10th December, 2003 to 31st December, 2003 and also on 09th January, 2004. On

the basis of the interviews, final list of selected candidates was kept ready and when letters of appointment were about to be issued, the Collector of Sangli by letter dated 04th March, 2004 informed the Municipal Corporation that code of conduct was brought into force in view of ensuing elections of the Parliament. Reliance has been placed on a letter sent by the second Respondent to the Collector of Sangli by which the second Respondent informed the Collector that a list of selected candidates was ready and in view of code of conduct there was difficulty in making the appointments. On 31st March, 2004 the Collector clarified that in view of the applicability of the code of conduct, appointments cannot be made. The correspondence referred to above shows that atleast as on 12th March, 2004 a list of selected candidates was kept ready by the Municipal Corporation. This Court heard the Writ Petitions on 09th March, 2004 and the judgment was reserved. The process of conducting interviews was completed on 09th January, 2004. In his affidavit in reply, the second Respondent has stated that after the code of conduct ceased to apply, in good faith, the letters of appointment were issued to the selected candidates on 24th May, 2004 and 27th May, 2004. It is contended that as the letters of appointment were based on the interviews conducted

before the date of passing the order of this Court, there is no intentional, wilful or deliberate breach of the order of this Court on the part of the second Respondent. It is stated that out of 44 persons who were the Respondents in Writ Petitions, three have been already accomodated in the vacant posts. There are two further affidavits filed on behalf of the Municipal Corporation. In affidavit dated 26th March, 2007 filed by one J.V. Naik, Labour Officer of the Municipal Corporation it is stated thus:

> "1. I say that the recruitment to total 218 was made from backlog of appointments to fill reserved posts, reserved for SC, ST and OBC candidates. Same figure is wrongly mentioned in Exhibit III to the affidavit dated 6.3.2007 filed by the respondent No.2 as 238. I say that out of 218 candidates, 45 candidates appointed on the establishment of Sangli Miraj and Kupwad Cities, Municipal Corporation in the cadre of Peons/ Watchmen/ Chowkidars/ Lab Attendent/Orderly and Phone attendant which are interchangeable. I further say that at present there are only 13 posts in the abovesaid cadre which are vacant which will be filled in due course".

5. Lastly, an affidavit has been filed on 02nd April, 2007 by one Shri Y.V. Mali, Additional Commissioner of Municipal Corporation. In paragraph No.1 of the said affidavit, he has stated thus:

> "1. I say that at present there are only 13 vacant posts in the Cadre of peon/ watchman/chowkidar/lab attendant, orderly and phone attendant with the Corporation. I further say that the said 13 vacant posts will not be filled without giving an opportunity to 41 persons out of 44 persons mentioned in clause (v) of Order dated 19.3.2004 passed by this Hon'ble Court in Writ Petition No.3799 of 2004, Writ Petition No.2165 of 1995 and Writ Petition No.2170 of 1995 and their cases will be considered by giving them relaxation of age".

6. It is apparent from the material on record that after conducting interviews, the list of selected candidates was finalised even before the hearing of the Writ Petitions was concluded. The appointments could not be made in view of the applicability of code of conduct from 04th March, 2004. On 23rd May, 2004 and

27th May, 2004 the second Respondent issued orders of appointments to those candidates who were selected even before the hearing of the Writ Petitions was concluded. After the period of applicability of code of conduct was over, the second Respondent has issued orders of appointment. Therefore, it cannot be said that there is any willful or deliberate breach of the order passed by this Court on the part of the second Respondent. In the affidavit dated 02nd April, 2007 and in particular in paragraph No.1 thereof an assurance has been given to this Court which is already quoted above. The statement made in paragraph No.1 of the said affidavit is accepted.

7. Considering what is stated above, no case is made out for taking any further action against the second Respondent.

8. Notice issued to the second Respondent is discharged. Contempt Petition is disposed of.

JUDGE